

CIVIL REVISION APPLICATION No 297 of 1995

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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2. To be referred to the Reporter or not? No @

5. Whether it is to be circulated to the Civil Judge?  
No

Versus

A M C

MR MB GANDHI for Petitioner

MR PRASHANT G DESAI for Respondent No. 1, 2

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 08/09/98

ORAL JUDGEMENT

1. This Revision under Section 115 C.P.C. has been filed challenging the order of the Court below allowing the application of the respondent seeking certain amendment in the written statement.

2. Learned Counsel for the parties have been heard. There can be no dispute that the proposed amendments were sought through an amendment application moved at a very late stage after conclusion of evidence of the parties and also when arguments were partly heard. However, delay in moving amendment application can be no ground or justification for rejecting the amendment application. Amendment application can be moved even in First Appeal and Second Appeal provided such amendment is bonafide and essential for effective disposal of the controversy amongst the parties.

3. In the instant case certain admission was made in Para : 4 of the written statement that the plaintiff revisionist is owner of Survey Plot No.54. In the amendment Application it was stated that this admission was made by mistake, but it does not seem to be so. If it was a case of mistake it should have been rectified when the defendant was going to lead evidence in support of its case. This mistake was not noticed at that stage. Surprisingly enough the defendant examined its witness Rameshchandra Ratilal Darji who, in the witness box, admitted on oath that the plaintiff is owner of Survey plot No.54. The question is whether such admission made in the written statement duly confirmed by a statement on oath of one of the witnesses of the defendant can be permitted to be withdrawn especially when there is no allegation that said Rameshchandra Ratilal Darji is in collusion with the plaintiff.

4. Now through proposed amendment the defendant wanted to plead that the plaintiff is not the owner of the plot No.54.

5. Learned Counsel for the respondent contended that the amendment is the result of bonafide mistake. I am, however, unable to agree with this contention for the reasons given above. He further contended that issue has already been framed regarding plaintiff's ownership over

survey plot No.54 and this issue cannot be answered on mere admission of the defendant. However, it is not for this court in revision to decide whether the trial Court would be justified to decide issue No.3 on the admission contained in Para : 4 of the written statement and also on the admission of the defendant's witness Rameshchandra Ratilal Darji. The trial Court may also be inclined to consider other oral and documentary evidence adduced by the plaintiff to establish his ownership in the property. If the plaintiff's attempt in this direction succeeds he cannot be deprived from taking some advantage of the defendant's admission in the written statement as well as the admission of the defendant's witness in the witness box.

6. The trial Court placing reliance upon Supreme Court's verdict in Panchdev V/s. Jyoti, reported in 1983 SC 462 has observed that the defendant can be permitted to withdraw such admission in the written statement. The trial Court, while making such observation, was of the view that the so called admission was the result of mistake, but this observation does not seem to be correct in view of what is stated above in this judgment.

7. However, the latest view of the Apex Court in the case of Hiralal V/s. Kalyanmal, reported in A.I.R. 1998 SC 618 is different. It was also a case where amendment of written statement was sought. A suit for partition was filed in which the defendant admitted seven, out of ten, properties to be joint family property. This admission was contained in the written statement. Subsequently amendment was sought and it was pleaded in respect of three properties to be belonging to the defendants exclusively. The withdrawal of admission of the defendant regarding seven joint family properties was not held permissible by the Apex Court in the said case for the reason that if the amendment is allowed it would displace the plaintiff's case and his right to get preliminary partition decree may be affected. On the same footing in the case before me it can be said that valuable right has accrued to the revisionist from the admission contained in Para : 4 of the written statement and also from the admission made by the defendant's witness Rameshchandra Ratilal Darji and if such withdrawal of admission is permitted it will certainly affect the valuable right which has accrued to the plaintiff.

8. In my opinion, in view of Apex Court's verdict in Hiralal's case (supra) the proposed amendment could not be granted by the trial Court. The order of the trial

Court is, therefore, in breach of the principles of law.  
The revision has, therefore, to be allowed and is hereby  
allowed. The order under revision is set aside. The  
parties to bear their own costs.

sd/-

( D. C. Srivastava, J.)

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